

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE COUNTY OF MORRISON

In the Matter of Disciplinary Actions  
Against the On-Sale Liquor Licenses of:  
Roger M. Pedley d/b/a Little Falls  
Morrison County Bowling Center;  
Joseph Virnig d/b/a Channel Inn Resort;  
Jerry's Supper Club, Inc. d/b/a Jerry's Supper Club;  
Bradley & Ann Peterson d/b/a 12 Mile Tavern;  
D & K Ludovissie, Inc. d/b/a Lin Club  
Lawrence G. Wiegele d/b/a Castaway Supper Club;  
Dennis Perkins d/b/a The Bullshippers II  
Parlak Corporation d/b/a Good Time Charlies;  
Morrill Food & Liquor;  
Ralph Freeman d/b/a Country Hearthside Inc.;  
Gordon K. Wheeler d/b/a Camp Ripley Store, Bar & Grill;  
Michael T. & Carole J. Dickson d/b/a The Crews Inn;  
Richard E. Schavey d/b/a 37 Acres;  
The Canteen Supper Club, Inc. d/b/a The Canteen;  
Carl F. VonderHaar, Von's Enterprises, Inc. d/b/a  
Oaks Char Broiler.

FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Peter C. Erickson on April 15, 16 and 17, 1992, in the Morrison County Courthouse, Little Falls, Minnesota. By agreement of the parties, the disciplinary actions against each of the fifteen establishments referenced above were consolidated for purposes of this hearing. Although the facts of the violation alleged to have been committed by each of the establishments was litigated separately, evidence "common" to all or some of the establishments was not duplicated in the record.

Conrad I. Freeberg, Morrison County Attorney, Government Center, 213 S.E. First Avenue, Little Falls, Minnesota 56345-3196, appeared on behalf of Morrison County with respect to the disciplinary action against each of the establishments listed above. Michael K. O'Tool, Attorney at Law, 1380 Frost Avenue, Maplewood, Minnesota 55109, appeared on behalf of each of the fifteen establishments referenced above. The record on this matter closed on May 19, 1992, the date of receipt of the last post-hearing memorandum.

This report is a recommendation only, not a final decision. The Morrison County Board of Commissioners will make the final decision after a review of the record and may adopt, reject, or modify the Findings of Fact, Conclusions and Recommendation contained herein. Pursuant to Minn. Stat. 14.61, the



final decision of the County Board shall not be made until this report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this report to file exceptions and present argument to the County Board. The parties should contact Morrison County Auditor, Russ Nygren, Administration Building, Morrison County Courthouse, Little Falls, Minnesota, to ascertain the procedure for filing exceptions or presenting argument.

#### STATEMENT OF ISSUES

The issues to be determined in this contested case proceeding are:

1. What is the appropriate standard of proof which the County must meet in order to prove the allegations herein?
2. With respect to each of the fifteen referenced establishments, did the Licensee or an employee make a sale of intoxicating liquor to a minor in violation of Minn. Stat. 340A.503, subd. 2(1)?
3. If an illegal sale of alcoholic beverages by a Licensee is proved, what is the appropriate disciplinary action be taken against that Licensee?
4. Was the conduct of the Morrison County Sheriff's Department in these cases so outrageous as to deny the license holders their right to due process of law under the 5th and 14th Amendments to the United States Constitution and Article I, Sections 2 and 7 of the Constitution of the State of Minnesota?
5. Whether any illegal sales of alcoholic beverages proved herein were induced by the actions of the Morrison County Sheriff's Department and their decoys, thus constituting illegal entrapment?

Based upon all of the proceedings herein and the arguments of counsel, the Administrative Law Judge makes the following:

#### FINDINGS-OF FACT

1. Each Licensee referenced above in the caption of this case has held its on-sale liquor license since sometime prior to November of 1991 and continues to be the license holder at the present time.
2. During the summer and early fall of 1991, Morrison County Sheriff Paul M. Tschida received a number of complaints, some being anonymous, that some on-sale bars in Morrison County were selling alcoholic beverages to minors. Consequently, in October of 1991, Sheriff Tschida decided to investigate these complaints through an undercover operation using underage individuals as "decoys" to attempt to purchase alcoholic beverages at bars in

rural Morrison County.

3. The parties stipulated that each of the deputy sheriffs involved in the undercover operation was acting at the direction of Sheriff Tschida and each had the same knowledge of the liquor laws that the Sheriff had.

4. Sheriff Tschida chose to use an undercover operation because he believed it was the most effective methodology to detect illegal sales of

intoxicating beverages and was a commonly-used practice in the enforcement of liquor laws. He hired Peggy Block, a twenty year-old white female (d/o/b 7-10-71) and Wayne Heath, then an eighteen year-old white male (d/o/b 12-6-72)

to work as undercover agents or decoys. Neither of these decoys had any special training in law enforcement or undercover work. However, Ms. Block

was a full-time dispatcher for the Morrison County Sheriff's Department and Mr. Heath was a law enforcement student at Bemidji State College.

5. Sheriff Tschida met with both Block and Heath to give them oral instructions as to how they were to conduct the undercover investigation. He instructed both decoys to proceed with a deputy to the various liquor establishments in the County and enter the bar by themselves, without the deputy. Block and Heath were instructed to act normally and ask to be served an alcoholic beverage. They were told not to offer any identification, to lie

about their age if asked, and not to consume the alcoholic beverage. The Sheriff gave Block and Heath funds with which to purchase beverages they ordered and were served. They were told to bring a sample of the beverage they purchased out of the bar, either in the original container or in a sample bottle provided by the Sheriff. These beverage samples and containers were to

be given to the deputy who would be waiting a short distance from the establishment. Block and Heath performed their functions independently; they

each went to different bars. However, Peggy Block was accompanied by her twenty-three year-old boyfriend when she made purchases at some of the establishments.

6. Both Block and Heath wore casual clothing which included jeans, shirts, sweaters, and jackets when performing the undercover functions. Neither wore a disguise or any special makeup.

7. No law enforcement agent accompanied the decoys when they entered the licensed establishments. No audio or visual recording of the sales of intoxicating beverages was made by the decoys or the Sheriff's Department. The Sheriff decided that it was best not to immediately confront the "sellers" as it might impair the effectiveness of the continuing operation.

8. Sheriff Tschida instructed the deputies who were assigned to work with the decoys to properly tag and preserve evidence that the decoys brought out of the bars and to write an investigative report after learning what happened in the bar from the decoy. Approximately thirty-four bars were targeted for this undercover investigation.

9. The undercover operation began in early November of 1991 and was completed in January of 1992. This investigation was undertaken in response to a series of unsolicited complaints rather than an immediate reaction to a specific problem in any particular bar or bars. The Sheriff had received specific complaints about some of the establishments included in the undercover operation but there had been no recent criminal charges issued against any of the Licensees herein.

10. Pursuant to Sheriff Tschida's instructions, deputies did not enter an establishment immediately after an allegedly illegal sale was made in an attempt to identify the seller except on one occasion. Rather, the decoys were brought back to the establishment several days later in an attempt to identify the person who allegedly sold them alcoholic beverages.

11. Sheriff Tschida was familiar with all applicable statutes regarding the sale and purchase of alcoholic beverages. Sheriff Tschida and his deputies were and are aware that Minn. Stat. 340A.503, subd. 2(3), makes it illegal to induce a person under the age of twenty-one years to purchase or procure alcoholic beverages.

12. Samples of the beverages purchased by the decoys were submitted to the Minnesota Bureau of Criminal Apprehension for chemical testing. The fifteen samples submitted for each of the bars herein were found to contain more than 3.2 percent alcohol by weight.

13. After completion of the undercover operation, Sheriff Tschida and the Morrison County Attorney determined that no criminal charges would be pursued, rather, only a civil remedy would be sought before the Morrison County Board of Commissioners with respect to the on-sale liquor licenses. On January 21, 1992, Sheriff Tschida informed the Morrison County Board of alleged illegal sales by the fifteen establishments herein and requested that the Board suspend each of the liquor licenses for five days, from March 1 through March 5, 1992, and fine each Licensee \$300.00. None of the Licensees had been informed that these allegations would be discussed at the County Board meeting. Consequently, none of Licensees herein attended or participated in any manner at the meeting.

14. The Board of Commissioners took the action requested by Sheriff Tschida and informed each Licensee, by mail, that their liquor license would be suspended from March 1 to March 5, 1992, and that a \$300.00 fine would be imposed. The Licensees were further informed that they could request a hearing on the Board's action. Subsequently, all fifteen of the Licensees requested a hearing on the Board's proposed action. The Board then decided to hire an Administrative Law Judge from the Minnesota Office of Administrative Hearings to conduct the hearings and make findings and a recommendation regarding appropriate disciplinary action. The Licensees herein are aware that the County will not bring any criminal action against them as a result of the allegedly illegal sales of alcoholic beverages which are the subject of this hearing.

15. On March 10, 1992, a Notice and Order for Hearing was served on each of the Licensees herein by first class mail. Michael O'Tool, Attorney at Law, filed a Notice of Appearance on behalf of each Licensee.

Roger M, Pedley d/b/a Little Falls\_Morrison County Bowling Center

16. Roger Pedley is the Licensee for the Little Falls Morrison County Bowling Center, which he has operated for the last sixteen years. Neither he nor any of his employees have ever been convicted of or charged with any violation of the state liquor laws during that time. The Sheriff's Department has not had any complaints filed against this establishment. Bowling comprises the major part of Mr. Pedley's business but he also serves food, liquor, and has a game room. Consequently, Mr. Pedley has many customers in his establishment under the age of twenty-one but he instructs all of his employees to be careful when serving alcoholic beverages to be sure that the persons served are twenty-one. He instructs his employees that if they are in



doubt, to ask for identification.

17. On the evening of January 17, 1992, Wayne Heath was transported to the Little Falls Morrison County Bowling Center by Deputy Sheriff Alan Mersy in an unmarked squad car. Mr. Heath was wearing a coat, shirt, jeans and cowboy boots. Mr. Heath is 5 feet 10 inches tall and weighs approximately 240 pounds. At approximately 8:30 p.m., Wayne Heath entered the lounge area in the bowling center and walked up to the bar. At that time, he was the only one in the bar area with the exception of two waitresses. A female waitress behind the bar asked Mr. Heath if she could help him and Mr. Heath ordered a Stroh's Lite. The waitress brought Mr. Heath a bottle of Stroh's Lite and he paid for the beer. The waitress did not ask Wayne Heath how old he was or for any identification. The person who sold the beer to Heath was a white female with dark hair covering her neck, about 5 feet 6 inches to 5 feet 7 inches tall, and wore dark glasses.

18. Immediately after receiving the beer, Heath went to the restroom where he transferred a sample of the purchased beer into a small plastic container provided by the Sheriff's Department. A short time later, Heath left the bar with the sample and the bottle of Stroh's Lite in his jacket pocket. Mr. Heath turned the sample container and Stroh's Lite bottle over to Deputy Mersy who was waiting nearby in the squad car. Heath told Mersy what had transpired in the bar and gave him a physical description of the female bartender. Deputy Mersy marked both the plastic sample bottle and the Stroh's Lite bottle which had been emptied.

19. On January 24, 1992, Wayne Heath returned to the Little Falls Morrison County Bowling Center with Deputy Mersy. Heath entered the bar area alone and saw the person who sold him the beer on January 17, 1992. Heath exited the bar and described the seller to Deputy Mersy who then entered the establishment and identified the seller as Faith Mitchell, an employee of the Licensee.

Joseph Virnig d/b/a Channel Inn Resort

20. Joseph Virnig is the Licensee and owner of the Channel Inn Resort. Since he has owned the business, there have been no charges filed against him or any of his employees for violations of the liquor statutes. No "official" complaints have been lodged against him or his business with the exception of a small number of anonymous complaints phoned into the Morrison County Sheriff's Department. Mr. Virnig instructs his employees not to serve alcoholic beverages unless they are sure the person is of legal age to make

the purchase. This establishment is located in a rural area and the employees usually know most of their customers. The Channel Inn Resort is a bar, dance hall and restaurant.

21. On November 16, 1991, Deputy Sheriff Gerald Pasch met Wayne Heath and proceeded in a marked squad car to a location approximately one-quarter mile from the Channel Inn Resort. At approximately 9:22 p.m., Mr. Heath entered the establishment and sat on a stool next to the bar. Mr. Heath ordered a Stroh's Lite from the bartender and was given a can of Stroh's Lite which he paid for. Wayne Heath was not asked his age or for any form of identification. Immediately after receiving the can of beer, Heath went to

the restroom and poured some of the beer into a plastic sample bottle. A short time later, Heath left the bar with the sample and a partially-filled can of Stroh's Lite beer. Mr. Heath gave the two containers to the deputy sheriff and described to the deputy what had happened inside the bar.

22. The person who sold the beer to Wayne Heath was a male, approximately 6 feet tall with shoulder-length brown hair, a mustache and glasses. The bartender was approximately twenty-five to thirty years of age, weighed approximately 175 pounds, and was dressed in jeans and a T-shirt.

23. Deputy Pasch marked the plastic sample container and the can of Stroh's Lite beer which had been emptied onto the ground.

24. On November 22, 1991, Wayne Heath returned to the Channel Inn Resort with Deputy Sheriff Randy Simonson. Mr. Heath entered the bar and identified the bartender, Joseph Virnig, as the bartender who had served him on November 16.

25. On November 16, 1991, Joseph Virnig had switched shifts with his brother, Dan, who was a co-owner at that time. The Judge specifically finds that either Joseph Virnig or Dan Virnig was the bartender who sold beer to Wayne Heath on November 16, 1991, without asking for identification.

Jerry's Supper Club, Inc. d/b/a Jerry's Supper Club

26. Jerry's Supper Club is a restaurant and lounge located in rural Morrison County. Jerry Witt has owned this business for the past twelve years. During that time, neither he nor any of his employees have ever been convicted of or charged with any violation of the state liquor laws. In addition to the bar and restaurant business, Mr. Witt also has banquet facilities for groups up to 325. Mr. Witt instructs his employees to request identification from bar patrons if there is any doubt as to whether or not the patron is twenty-one years old. Mr. Witt has sent his employees to training courses for instruction in the areas of "carding" and how to deal with intoxicated patrons.

27. On November 15, 1991, Wayne Heath met Deputy Sheriff Michael Wetzel and proceeded to Jerry's Supper Club in a marked squad car. At approximately 8:22 p.m., Mr. Heath entered the establishment and went to the bar area where he sat down on a stool. There was one female bartender working at that time. Mr. Heath ordered a Stroh's Lite beer from the bartender who served it to him in a returnable bottle. Mr. Heath paid for the beer but was not asked his age

or for any form of identification. The bartender working that night was Karen Jacobson, Jerry Witt's daughter.

28. After being served the beer, Mr. Heath went to the restroom and poured some beer from the bottle into the plastic sample container. A short time later, Wayne Heath left the bar with the plastic sample container which was turned over to Deputy Wetzel waiting nearby in the squad car. Wayne Heath gave a physical description of the bartender to Deputy Wetzel. The plastic container was marked by Deputy Wetzel at that time.

29. On November 29, 1991, Wayne Heath returned to Jerry's Supper Club with Deputy Simonson. Mr. Heath entered the bar but did not recognize the bartender who had been working on November 15. Deputy Simonson entered the bar and talked to the owner, Jerry Witt, who stated that Karen Jacobson had been working on that night. Ms. Jacobson admitted working on November 15, 1991, in response to a phone call by Deputy Simonson. Ms. Jacobson has managed Jerry's Supper Club for twelve years and worked as a cook, waitress and bartender during that period of time.

#### Bradley & Ann Peterson d/b/a 12 Mile Tavern

30. The 12 Mile Tavern is a bar and restaurant located in rural Morrison County. Bradley and Ann Peterson are the Licensees and owners of this establishment which they have operated for approximately three years. During that time, neither they nor any of their employees have been convicted of or charged with a violation of the state liquor laws. However, the Sheriff's Department has received anonymous complaints concerning activities at the 12 Mile Tavern.

31. The 12 Mile Tavern consists of a bar area, game area and dining-room area. The Petersons instruct their employees to card every patron who does not look at least twenty-five years old.

32. On November 21, 1991, Peggy Block met Deputy Simonson and they proceeded to the 12 Mile Tavern in an unmarked squad car. After they arrived, Ms. Block entered the bar alone and sat on a bar stool. A waitress/bartender approached her and asked her "if she could get her something." Ms. Block ordered a Stroh's Lite and was served by the waitress without any inquiry as to her age or identification. Ms. Block paid for the beer and shortly thereafter, exited the bar with the can of beer and gave it to the deputy who was waiting nearby in the squad car. Deputy Simonson poured some of the beer into a plastic sample container and poured out the rest on the ground.

33. After Ms. Block described the appearance of the bartender to Deputy Simonson, he entered the bar and identified an employee, Pamela Koska, as the individual who had sold the beer to Block. Ms. Koska admitted selling the beer to Block at that time.

34. Pamela Koska has been bartending at the 12 Mile Tavern for approximately two years and has attended schools to learn how to judge the age of patrons and otherwise comply with the Minnesota liquor laws.

#### D & K Ludovissie Inc. d/b/a Lin Club

35. The Lin Club is a supper club and bar located in rural Morrison

County. Dennis Ludovissie has owned the Lin Club for approximately five years. During that time, neither he nor any of his employees have ever been convicted of or charged with a violation of the state liquor laws. The Sheriff's office has not received any complaints concerning any activities at the Lin Club in the recent past.

36 On November 21 , 1991 , Peggy Block met Deputy Simonson and they proceeded to the Lin Club in an unmarked squad car. At approximately 11:00 p.m., Ms. Block entered the establishment and walked up to the bar. A male bartender walked up to Block and asked her "if he could help her". Ms. Block then ordered a Stroh's Lite and was served by the bartender without inquiry as to her age or whether she had any identification. The bartender brought Ms. Block a returnable bottle and poured some of the beer into a glass. Right after she was served, Ms. Block went into the bathroom with the glass of beer and poured some into a plastic sample container. She then returned to the bar, set the glass down, and left the building. Ms. Block gave Deputy Simonson the plastic sample container and told him what the bartender looked like.

37. Deputy Simonson marked the sample container and then entered the Lin Club to identify the bartender who sold Ms. Block the beer. After looking around, Deputy Simonson identified Dennis Ludovissie as the individual who had sold Ms. Block the beer. Ludovissie was the only person in the bar at that time.

38. Dennis Ludovissie admitted making the sale to Ms. Block but did not card her because he thought she was at least twenty-five years old.

Lawrence G. Wiegele d/b/a Castaway Supper Club

39. The Castaway Supper Club is a supper club/bar located in rural Morrison County. Lawrence Wiegele is the Licensee and has owned the establishment for approximately one and one-half years. During that time, neither he nor any of his employees have been convicted of or charged with a violation of the state liquor laws. The Sheriff has not received any complaints concerning activities at this establishment at any time in the recent past. Mr. Wiegele instructs his employees to use their own judgment with respect to carding patrons.

40. On November 21, 1991, Peggy Block met Deputy Simonson and proceeded to the Castaway Supper Club in an unmarked squad car. At approximately 11:30 p.m., Ms. Block entered the establishment and walked up to the bar. A bartender approached her and asked if he could get her anything. Ms. Block ordered a Stroh's Lite and was served by the bartender who did not ask her how old she was or if she had any form of identification. However, the bartender appeared to be nervous and somewhat hesitant when he served Ms. Block the beer, some of which was poured into a glass by him.

41. After serving the beer to Block, the bartender asked her how old she was and Block replied that she was twenty-one. The bartender then asked her for identification but Block responded that she did not have anything with her. The bartender asked a woman who was seated next to Ms. Block if she thought Block was old enough and that patron stated that she thought she (Ms. Block) was.

42. Peggy Block went to the bathroom with the glass of beer and poured some of it into the plastic sample container. She then returned to the bar, put the glass down, and left the bar with the plastic container. Ms. Block gave the container to Deputy Simonson and described to him the bartender who



had served her.

43. Deputy Simonson entered the bar and based upon the description given to him by Block, identified Jeff Burtyk as the bartender who sold the beer to Block. At that time, Mr. Burtyk admitted to Simonson that he had sold the beer to Peggy Block. Burtyk stated to Simonson that he "knew he screwed up; I shouldn't have served her."

#### Dennis Perkins d/b/a The Bullshippers II

44. The Bullshippers II is a bar and dance hall located in rural Morrison County. Dennis Perkins is the Licensee and has owned the Bullshippers II since September 3, 1991. Since that date, neither he nor any of his employees have been convicted of or charged with violations of the state liquor laws. However, the Sheriff's Department has received some complaints regarding activities at that establishment. Mr. Perkins instructs his employees that if they don't know the person is over age twenty-one, to card them. A "bouncer" is stationed at the door on weekends to check I.D.s and mark those persons who are under twenty-one.

45. On November 9, 1991, Wayne Heath met Deputy Sheriff Bruce Motes and proceeded to the Bullshippers II. At approximately 9:30 p.m., Mr. Heath entered the establishment, went up to the bar, and ordered a Stroh's Lite. He was served the beer by a bartender and was not asked his age or if he had any identification. Mr. Heath observed the bartender waiting on other patrons when he was in the bar. Heath then left the establishment with the full can of beer and gave it to Deputy Motes who poured some into an evidence bottle and poured the rest on the ground.

46. Wayne Heath described the bartender to Deputy Motes as a white male, approximately 6 feet tall, with shoulder-length brown hair, and weighing approximately 160 pounds.

47. On November 22, 1991, Wayne Heath returned to the Bullshippers II with Deputy Simonson. At that time, Heath could not identify anyone working in the establishment as the bartender that sold him the beer on November 9. Simonson went into the bar and talked to Dennis Perkins who told him that Heath's description does not fit any of the bartenders employed by the Licensee at that time.

#### Parlak Corporation d/b/a Good Time Charlies

48. Good Time Charlies is a bar located in rural Morrison County. Ronald W. Parsons has owned and operated the establishment for approximately fourteen years. Although no previous charges have been filed against Mr. Parsons or any of his employees, the Sheriff's Department has received complaints concerning activities at the establishment. Good Time Charlies seats approximately 120 persons and has a pool and game room.

49. On November 9, 1991, Wayne Heath met Deputy Motes and proceeded to Good Time Charlies. At approximately 9:35 p.m., Mr. Heath entered the establishment and sat on a stool at the bar. A female bartender approached



and Mr. Heath ordered a Stroh's Lite. The bartender served Mr. Heath without asking his age or for any identification. Mr. Heath was able to identify the bartender as an individual named "Tammy", approximately 5 feet 8 inches tall, with blond hair, weighing approximately 140 pounds. Mr. Heath paid for the beer and then went to the bathroom. There, he poured some of the beer out of the can into a plastic sample container and then took both the can and the plastic bottle back to Deputy Motes who was waiting outside of the bar. Deputy Motes marked both the sample container and can of Stroh's Lite which was emptied on the ground.

50. On November 22, 1991, Wayne Heath and Deputy Simonson returned to Good Time Charlies to try to identify the bartender who had served Wayne Heath on November 9. At that time, based upon the description and name supplied by Heath, Deputy Simonson identified Tamara Jasper as the bartender who sold the beer. Ms. Jasper admitted that she had worked on November 9, 1991, but was not able to recall selling beer to anyone of Heath's description.

#### Morrill Food & Liquor

51. Morrill Food & Liquor is a corporate Licensee which has held the license for approximately ten years. This establishment is a bar, restaurant and dance hall located in rural Morrison County. Ken Foss is the owner-operator of the establishment. There had been one prior criminal charge against the Licensee in 1987, and the Sheriff's Department has received more recent complaints concerning activities at the establishment.

52. On November 8, 1991, Wayne Heath met Deputy Motes and they proceeded to Morrill Food & Liquor. At approximately 10:30 p.m., Mr. Heath entered the establishment and went up to the bar. He ordered a Stroh's Lite beer and was served without being asked his age or for any identification. The bartender was a white male, approximately thirty to thirty-five years old, 5 feet 8 inches tall, with light-brown hair and a mustache.

53. Mr. Heath did not drink the beer but went to the restroom to pour some of the beer out of the bottle into a plastic sample container. A short time later, Heath left the bar with the plastic container and the bottle of Stroh's Lite beer. Both the plastic container and bottle of beer were given to Deputy Motes who was waiting nearby in a squad car. Mr. Heath gave a physical description of the seller to Deputy Motes.

54. On November 22, 1991, Wayne Heath returned to Morrill Food & Liquor with Deputy Simonson. At that time, Mr. Heath did not identify any bartenders who were working as the one that sold him the beer on November 8.

55. Deputy Simonson entered the bar on November 22 and, based on the description given to him by Heath, was told by the bartender who was working that the individual must have been Kenneth Foss. Kenneth Foss had worked the evening of November 8, and fit the description given by Wayne Heath.

Ralph Freeman d/b/a County Hearthside Inc.

56. The Country Hearthside is a restaurant and lounge located in rural

Morrison County. Ralph Freeman is the Licensee and has owned and operated the establishment for the past nine years. During that time, neither he nor any of his employees have ever been convicted of or charged with any violation of the state liquor laws. One anonymous complaint was made to the Sheriff's Department in the recent past, however.

57. On November 22, 1991, Wayne Heath met Deputy Simonson and they proceeded to the Country Hearthside in a squad car. At approximately 8:30 p.m., Mr. Heath entered the establishment and sat down at the bar. At that time, he asked the bartender for a Stroh's Lite, but was given a Miller Lite instead by the bartender. Mr. Heath paid for the beer and was never asked his age or for any identification. The bartender was Ralph Freeman, the bar owner.

58. After being served, Wayne Heath went to the restroom and poured a portion of the beer out of the bottle into a plastic evidence container. Heath then left the bar and gave both the sample container and bottle to Deputy Simonson who placed a marking on each.

59. Deputy Simonson then entered the bar and identified Ralph Freeman as the bartender who had made the sale to Wayne Heath. Mr. Freeman admitted making the sale at that time. However, Mr. Freeman made the sale because he thought Wayne Heath looked at least twenty-one years old. Mr. Freeman considered carding Heath after he served him but Heath had already left the bar.

Gordon K. Wheeler d/b/a Camp Ripley Store Bar & Grill

60. The Camp Ripley Store, Bar & Grill is a bar, cafe, grocery store and gas station located in rural Morrison County. Gordon Wheeler has owned this establishment for approximately the past eleven years. During that time, neither he nor any of his employees have been charged with or convicted of a violation of the state liquor laws. However, the Sheriff's Department has received complaints concerning activities at the establishment in the recent past.

61. On November 9, 1991, Peggy Block met Deputy Sheriff Daniel Eastvold at the Sheriff's Department before beginning an evening of undercover operations at several bars in Morrison County. On this evening, Ms. Block was accompanied by her twenty-three year-old boyfriend, Ron Beam. Beam and Block drove to the Camp Ripley Bar & Grill followed by Deputy Eastvold.

62. At approximately 8:50 p.m., Peggy Block and Ron Beam entered the Camp Ripley Bar & Grill. Both went in and sat at the bar. A female bartender approached and asked if she could "help". Peggy Block ordered two Stroh's Lites and after the bartender told her they did not have Stroh's Lite, she ordered two "regular" Stroh's. Ron Beam was seated to Ms. Block's right at

that time. The bartender returned with the two beers and placed them between Block and Beam. Ms. Block paid for the beers. Ms. Block was not asked her age or to produce any identification.

63. The person who sold the beer to Peggy Block was a white female, approximately thirty years old, medium height, wearing lots of makeup with

shorter brown hair which came to about the middle of her neck.

64. Peggy Block did not drink any of the beer but rather went to the restroom to transfer part of the bottle of beer into a plastic sample container. A short time later, Block and Beam left the bar with the sample and the remainder of the bottle of Stroh's beer. This evidence was turned over to Deputy Eastvold who was waiting a short distance away in the squad car. At that time, Ms. Block gave a description of the bartender to Deputy Eastvold.

65. Deputy Eastvold marked both the plastic sample container and the bottle of Stroh's beer.

66. On December 5, 1991, Peggy Block returned to the Camp Ripley Bar & Grill with Deputy Simonson. When they pulled into the parking lot, Simonson saw Gordon Wheeler in the lot and talked to him about the November 9 sale to Block. At that time, Mr. Wheeler stated that the bartender on November 9 was his only female bartender, Lynn Davidson. Ms. Davidson had been working at the bar on November 9, 1991.

67. The Camp Ripley Bar & Grill is located directly across the road from the main gate of the Camp Ripley Military Reservation. It is common for there to be a lot of foot traffic to the bar, often with persons carrying beer back and forth.

Michael T. & Carol J. Dickson d/b/a The Crews Inn

68. The Crews Inn is a bar and restaurant located in rural Morrison County. Although there have been no previous charges filed against the Licensees, the Sheriff's Department has received several anonymous complaints concerning activities at the establishment in the recent past.

69. On November 9, 1991, Peggy Block and Ron Beam met Deputy Eastvold approximately one-quarter mile south of the Crews Inn. At approximately 9:25 p.m., Ms. Block and Mr. Beam entered the establishment and Ms. Block paid a \$2.00 cover charge for each of them at the door. Neither was asked their age or for identification at that time. Peggy Block walked up to the bar and sat down on a stool while Mr. Beam went to the bathroom. A bartender approached Ms. Block and asked her if he could get her something. Ms. Block ordered two Stroh's Lite beers but because they did not have Stroh's Lite, she ordered two bottles of "regular" Stroh's. At approximately this time, Mr. Beam returned to the bar and sat down next to Peggy Block. The bartender did not ask Ms. Block how old she was or for any identification. The bartender took the

order and returned with the two beers which Ms. Block paid for. Ms. Block realized at this time that the bartender was the owner, Mike Dickson.

70. After being served the beers, Ms. Block went to the restroom to pour some of the beer out of the bottle into a small plastic sample container. A short time later, Block and Beam left the bar with the sample container. This container was turned over to Deputy Eastvold who was waiting a short distance away in a squad car. Ms. Block gave a physical description of the seller to Deputy Eastvold. The deputy marked the sample container containing the beer.



71. On December 5, 1991, Peggy Block returned to the Crews Inn with Deputy Simonson and identified Michael Dickson as the bartender who had sold her the beer on November 9.

Richard E. Schavey d/b/a 37 acres

72. 37 Acres is a bar and resort located in rural Morrison County. Richard Schavey has owned the establishment for approximately three years. During that time, neither he nor any of his employees have ever been convicted of or charged with any violations of the state liquor laws. However, the Sheriff's Department has received some complaints concerning activities at the establishment and on one occasion responded to a complaint concerning after-hours sales. Mr. Schavey instructs all of his employees that if they have any doubt concerning a patron's age, to make sure they ask for identification.

73. On November 9, 1991, Peggy Block and Ron Beam met Deputy Sheriff Eastvold at the 37 Acres bar. At approximately 11:00 p.m., both Beam and Block went into the establishment and sat down at the bar. A female bartender approached and asked if she could get them anything. Ms. Block ordered two Stroh's Lite beers and was served by the bartender. Ms. Block paid for the beers and was never asked her age or to produce any identification.

74. The bartender was a white female, approximately 5 feet 3 inches tall, and somewhat heavy-set. She had blond hair, longer than shoulder length, and had a tattoo on her right forearm. During the time that Block and Beam were there, the bartender stayed behind the bar and waited on other customers.

75. After being served, Ms. Block went to the restroom to pour a sample of the beer into a small plastic container. A short time later, Block and Beam left the bar with the sample container and an empty can of Stroh's beer. This evidence was turned over to Deputy Eastvold waiting a short distance away in a squad car. Deputy Eastvold marked the plastic sample container and took a description of the bartender from Ms. Block.

76. On December 5, 1991, Peggy Block and Deputy Simonson went to the 37 Acres bar so that Ms. Block could attempt to identify the bartender who had served her on November 9. At that time, Ms. Block did not see the bartender who had served her.

77. After Ms. Block told Deputy Simonson that she could not identify the bartender, the deputy went into the bar himself and talked to the owner, Richard Schavey. Mr. Schavey informed Simonson that Denise Drentlaw had been working on November 9. Simonson contacted Drentlaw on the phone and she admitted that she had worked the evening of November 9.

The Canteen Supper Club, Inc. d/b/a The Canteen

78. The Canteen is a bar and supper club located in rural Morrison County. Elmer Schaffer is the owner-operator of this establishment and has done so for the past fifteen years. During that time, there has been one

violation of state liquor laws in 1986 and recent complaints have been received by the Sheriff's Department concerning activities at the establishment. The Canteen is a large bar with a game area, and dance area with tables. This bar will hold approximately 135 people.

79. On November 9, 1991, Peggy Block and Ron Beam met Deputy Sheriff Eastvold approximately two miles away from The Canteen, Ms. Block and Mr. Beam went to the bar and entered it at approximately 10:45 p.m. They put their coats at a table and Ron Beam sat down at the table. Peggy Block went to the bar alone and a bartender asked if she could get her something. Ms. Block ordered two Stroh's Lite beers and was served by the bartender. Ms. Block paid for the beers and returned to Ron Beam at the table with the beers. Ms. Block was never asked her age or to produce any identification.

80. The bartender who served Peggy Block was a white female, approximately 5 feet 6 inches tall, slim with sandy-brown feathered hair.

81. Ms. Block went to the restroom with her can of beer and poured some into a small plastic container and emptied the rest. She returned to the table and left with Mr. Beam. Ms. Block gave the plastic container and the empty can to Deputy Eastvold who marked both of them as evidence. In addition, Ms. Block gave a description of the bartender to the deputy.

82. On December 5, 1991, Peggy Block and Deputy Simonson went to The Canteen so that Ms. Block could attempt to identify the bartender who had served her on November 9. Deputy Simonson talked to the owner, Elmer Schaffer, who told him that Jenny Hoskins fit the description given to him and had been working as a bartender on November 9, 1991.

83. The Canteen is located directly across the gate from Camp Ripley and does a substantial "on-foot" business.

Carl F. VonderHaar, Von's Enterprises. Inc. d/b/a Oaks Char Broiler

84. The Oaks Char Broiler is a supper club and lounge located in rural Morrison County. Carl VonderHaar is the owner of the corporation which holds the license and Gary VonderHaar has been the manager of the establishment since 1986. There have never been any charges filed or convictions of any employees of the business concerning violations of state liquor laws. The Morrison County Sheriff's Department has not received any recent complaints concerning any activities at the establishment. The manager instructs his employees to use their own judgment with respect to carding patrons but to card unless the customer looks like they are at least twenty-three or twenty-four.

85. On November 9, 1991, Peggy Block and Ron Beam met Deputy Sheriff Eastvold approximately one-half mile from the Oaks Char Broiler. At approximately 9:50 p.m., Mr. Beam and Ms. Block entered the establishment and went to the bar and sat on stools. The bartender asked if she could get them something and Ms. Block ordered snack-food and two Stroh's Lites. The bartender placed the food order and brought Ms. Block the two beers without asking her age or for any identification. Ms. Block paid for both the food and beer when they left.



86. After being served the food and beer, Ms. Block went to the bathroom with her glass of beer and poured some into a small plastic container. She returned to the bar and left the rest of the beer in the glass.

87. The bartender was a white male, approximately fifty years old, wore dark glasses and had slicked-back black hair. The bartender talked with both Block and Beam during the time they were at the bar.

88. After leaving the bar, Peggy Block gave the plastic sample container to Deputy Eastvold who marked it as evidence. Additionally, she gave the deputy a description of the bartender.

89. On December 5, 1991, Peggy Block returned to the Oaks Char Broiler with Deputy Simonson. Both went into the bar and Deputy Simonson spoke with the manager, Gary VonderHaar. At that time, he stated he had been working on November 9 and Ms. Block identified him as the bartender who had served her.

#### Applicable Rules, Statutes and Constitutional Provisions

Minn. Rule 1400.7300.

Subp. 5. Burden of proof. The party proposing that certain action be taken must prove the facts at issue by a preponderance of the evidence, unless the substantive law provides a different burden or standard. A party asserting an affirmative defense shall have the burden of proving the existence of the defense by a preponderance of the evidence . . . .

340A.415. License revocation or suspension.

The authority issuing or approving any retail license or permit under this chapter shall either suspend for up to 60 days or revoke the license or permit or impose a civil fine not to exceed \$2,000 for each violation on a finding that the license or permit holder has failed to comply with an applicable statute, rule, or ordinance relating to alcoholic beverages. No suspension or revocation takes effect until the license or permit holder has been afforded an opportunity for a hearing under sections 14.57 to 14.69 of the administrative procedure act . . . .

340A.501. Responsibility of licensee.

Every licensee is responsible for the conduct in the licensed establishment and any sale of alcoholic beverage by any employee authorized to sell alcoholic beverages in the establishment is the act of the licensee . . . .

340A.503. Persons Under 21: Illegal Acts.

Subd. 2. Purchasing. It is unlawful for any person:



(1) to sell, barter, furnish, or give alcoholic beverages to a person under 21 years of age:

(2) under the age of 21 years to purchase or attempt to purchase any alcoholic beverage: or

(3) to induce a person under the age of 21 years to purchase or procure any alcoholic beverage, or to lend or knowingly permit the use of the person's driver's license, permit, Minnesota identification card, or other form of identification by a person under the age of 21 years for the purpose of purchasing or attempting to purchase an alcoholic beverage.

Subd. 6. Proof of age; defense.

(a) Proof of age for purchasing or consuming alcoholic beverages may be established only by a valid driver's license or Minnesota identification card, or in the case of a foreign national by a valid passport.

(b) In a prosecution under subdivision 2, clause (1), it is a defense for the defendant to prove by a preponderance of the evidence that the defendant reasonably and in good faith relied upon representations of proof of age authorized in paragraph (a) in selling, bartering, furnishing, or giving the alcoholic beverage.

U.S. Constitution  
5th Amendment

No person shall be . . . deprived of life, liberty, or property, without due process of law . . .

14th Amendment

Sec. 1. Citizenship rights not to be abridged by states.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States: nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Minnesota Constitution  
Article One  
BILL OF RIGHTS

Section 2. Rights and privileges.

Sec. 2. No member of this state shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers . . . .

Section 7. Due process; prosecutions; double jeopardy; self-incrimination; bail; habeas corpus.

Sec. 7. No person shall be held to answer for a criminal offense without due process of law, . . . nor be deprived of life, liberty or property without due process of law.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Morrison County Board of Commissioners and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. 340A.415

and 14.50. The Notice of Hearing was proper in this matter and the Board has complied with all relevant substantive and procedural requirements of law and rule.

2. The appropriate standard of proof which the County must meet to prove that the Licensees herein sold alcoholic beverages to persons under twenty-one years of age is preponderance of the evidence.

3. The County has proved, by a preponderance of the evidence, that each of the fifteen Licensees herein sold an alcoholic beverage to a person under twenty-one years of age.

4. The conduct of the Morrison County Sheriff's Department in these cases was not so outrageous as to deny the license holders their right to due process of law under either the United States or Minnesota Constitutions.

5. Entrapment has not been proved by any of the Licensees herein.

6. A monetary fine (perhaps in an amount which will compensate the County for the costs of this proceeding) and minimal suspension (one day of the Licensees' choosing) would be an appropriate disciplinary action with



respect to each Licensee herein.

7. The Memorandum below is incorporated by reference herein.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

#### RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the Morrison County Board take disciplinary action against each of the Licensees herein consistent with the Findings of Fact and Conclusions set forth above.

Dated this 10 day of June, 1992.

PETER C. ERICKSON Administrative Law

Judge

#### NOTICE

It is respectfully requested that the Morrison County Board mail a copy of its final decision in this case to the Administrative Law Judge.

#### MEMORANDUM

The Licensees argue that because the disciplinary action proposed herein is based upon a violation of a criminal statute, those violations must be proved beyond a reasonable doubt. The Licensees acknowledge, however, that they have no statutory or case authority which requires that anything other than a preponderance of the evidence be used in a civil proceeding such as this. The Judge has been able to find one reported Minnesota case which addresses this issue in a dissenting opinion, Recommendation for Discharge of Kelvie, 384 N.W.2d 901, 907 (Minn. App. 1986) (the majority opinion did not address this issue). In Kelvie, Chief Judge Peter Popovich stated clearly that proof by a preponderance of the evidence of conduct which would constitute a criminal violation was sufficient in an administrative proceeding to constitute grounds upon which to take disciplinary action against an employee. A criminal conviction was not necessary; even an acquittal of the criminal offense would not preclude the administrative action. See, cases cited in Judge Popovich's dissent. The Judge has relied on Judge Popovich's analysis and the Rules of the Office of Administrative Hearings which specifically provide that facts must be proved by a preponderance of the evidence unless the substantive law provides a different burden. Minn. Rule 1400.7300, subp. 5.

Using the "preponderance of the evidence" burden, it is clear that all of the Licensees violated Minn. Stat. 340A.503, subd. 2(1), with the possible exception of Bullshippers II. When Wayne Heath returned to Bullshippers II with Deputy Simonson, he could not identify anyone working in the establishment at that time as a bartender that sold him the beer and no employee of the establishment could be identified based on Heath's description. However, when Heath purchased the beer on November 9, 1991, the bartender that served him was waiting on other patrons besides Heath who were at the bar. It was obvious to Mr. Heath that the person who served him the beer was working at the bar at that time. The Judge has concluded that the



individual who served Mr. Heath on November 9, 1991, at the Bullshippers II, was working at the establishment on that night and authorized to sell alcoholic beverages to the public. Consequently, the Licensee must be held responsible. See, Minn. Stat. 340A.501. In all of the other fourteen cases, either the sale was admitted by a bartender, the bartender was identified by Heath or Block at the bar, or the description of the bartender matched an employee of the Licensee.

The Licensees next contend that the conduct of the Morrison County Sheriff's Department in these cases was so outrageous that due process guaranteed by both the United States and Minnesota Constitutions has been denied to the license holders. The Licensees cite *Hampton v. United States*, 425 U.S. 484, 96 S.Ct. 1646 (1976), wherein the court held that the concept of fundamental fairness inherent in due process requirements will prohibit the conviction of a defendant if the conduct of the government in participating in or inducing the commission of the crime is sufficiently outrageous. However, in *Hampton*, the defendant's conviction for the illegal sale of drugs was upheld even though the court determined that government agents both supplied the illegal drug to the defendant and then purchased it from him. The court found in that case that the due process rights of the defendant had not been violated.

The Licensees argue that because the Morrison County Sheriff's Department employed persons (Block and Heath) who were under twenty-one years old to attempt to purchase alcoholic beverages in the undercover operation, they violated Minn. Stat. 340A.503, subd. 2(3). In addition, each decoy violated Minn. Stat. 340A.503, subd. 2(2), when they purchased alcoholic beverages in each of these cases. The Licensees contend that these allegedly criminal acts are so outrageous that their due process rights have been violated and these actions should be dismissed.

In *State v. Morris*, 272 N.W.2d 35 (Minn. 1978), the Minnesota Supreme Court adopted the fundamental fairness concept contained in *Hampton* and applied it to the case under appeal. In *Morris*, the court stated that, "Although the Supreme Court [*Hampton*] has not articulated any useful standards for application of the defense, it is clear that there will be few cases in which the defense will succeed." 272 N.W.2d at 36. The Judge, quite simply, does not find or conclude that the Morrison County Sheriff's Department committed any "outrageous" conduct herein. Rather, the Sheriff devised a very straightforward plan using an eighteen and twenty year-old as undercover agents to determine whether Morrison County bars would serve alcoholic beverages to those agents without requiring identification. The record does not show that any type of deceit or disguise was used to fool an unwary bartender. Although Ms. Block's twenty-three year-old boyfriend did accompany her on some bar visits, it was Ms. Block who did the ordering and paid for all

purchases. The Judge does not find any "outrageous" conduct herein.<sup>1</sup>

In Morris, the court considered the appeal of a prostitution conviction where the undercover agent lied about his status as a police officer and exposed his penis to the defendant in order to convince her that he was not a police officer. The court found that neither the deceit nor the act of exposure was sufficiently outrageous to bar the prostitute's conviction.

Lastly, the Licensees argue that each was entrapped into committing the violation alleged herein. In order to show entrapment, the Licensees must establish that a governmental agent induced the defendant to commit the violation. If inducement is shown by the defendant, then the complainant must prove beyond a reasonable doubt that the defendant was disposed to commit the violation in order to excuse the inducement. *State v. Grilli*, 230 N.W.2d 445, 452 (Minn. 1975); *Jacobson v. United States*, 112 S.Ct. 1535 (1992). In order to prove inducement, the evidence must show that the government did something more than merely solicit the commission of a crime. *State v. Olkon*, 299 N.W.2d 89 (Minn. 1980). In *Olkon*, the court stated that, "Something in the nature of persuasion, badgering, or pressure by the state must occur before the inducement element is satisfied." 299 N.W.2d at 107. In *Sorrells v. United-States*, 287 U.S. 435 (1932), the Supreme Court stated that, "It is well settled that the fact that officers or employees of the government merely afford opportunities or facilities for the commission of the offense does not defeat the prosecution. Artifice and stratagem may be employed to catch those engaged in criminal enterprises." 287 U.S. at 441. The *Sorrells* court went on to state that entrapment occurs when law enforcement officials "implant in the mind of an innocent person the disposition to commit the alleged offense and induce its commission in order that they may prosecute." 287 U.S. at 442.

In these fifteen liquor license cases, the Judge has concluded that the Morrison County Sheriff's Department did no more than present the opportunity for the fifteen Licensees to commit the violation alleged. There was no unusual action, deceit or improper conduct on the part of the decoy or Sheriff's Department which would make these sales any less culpable than a sale to any other eighteen or twenty year-old. It was the Judge's own observation that both Peggy Block and Wayne Heath appeared to be between nineteen and twenty-three years of age. Neither had the appearance of someone who was obviously over twenty-one years of age. The Licensees offered no evidence to show "persuasion, badgering, or pressure" by the decoys when the purchases were made. *Olkon*, supra. Because there is no proof of inducement, the issue of predisposition need not be addressed. However, in each of the fifteen establishments herein Block and Heath were readily served by the bartender or waitress. Only once was there a question raised concerning age

(Castaway Supper Club), but that was after Ms. Block had already been served.

The Judge has concluded that there was no entrapment in any of the fifteen cases herein.

None of these cases involve allegations of a repetitive course of conduct. Although complaints had been lodged by the public against some of the fifteen establishments in the recent past, most of the complaints were anonymous and no charges had been filed with respect to the complaints. Testimony from the Licensees herein have convinced the Judge that each makes a

good-faith effort to ensure that underage patrons are not served alcoholic beverages. Each tries to enforce "carding" policies. Additionally, some of

Licensees candidly stated that they sincerely believed Mr. Heath or Ms. Block

was over twenty-one and served them based on that belief. The Judge feels that only minimum disciplinary action is warranted in these cases.

However,

because it is clear that violations of Minn. Stat. 340A.503, subd. 2(1) did

occur, it would be appropriate to impose a fine against each of the fifteen

Licensees which collectively amounts to the cost of these proceedings. Additionally, a one-day suspension on a day of the Licensees' choosing would be appropriate. Normally, the Judge would not make a recommendation for specific disciplinary action. However, both parties indicated that the Judge would be in the best position to make a specific suggestion to the County Board.

PCE